

STATE OF INDIANA

COUNTY OF ST. JOSEPH

FILED
MAR 05 2001
St. Joseph Circuit Court

IN THE ST. JOSEPH CIRCUIT COURT

AVC NO. 01-020

IN RE: KENNY DAILY,
individually and doing business as
UPRIGHT CONSTRUCTION,

Respondent.

Clerk

MISCELLANEOUS DOCKET

NO. 210010103m7 00027

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Eric Jackson, and the Respondent, Kenny Daily individually and doing business as Upright Construction, enter into an Assurance of Voluntary Compliance (Assurance) pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law and upon consent of the parties.

The parties agree:

1. Respondent is an individual engaged in business as a home improvement contractor in St. Joseph County, with a principal place of business at 1001-248 Mayflower, South Bend, IN 46619.
2. The terms of this Assurance apply to and are binding upon Respondent, his employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 et seq.

4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:

- (a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (b) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (d) A reasonably detailed description of the proposed home improvements;
- (e) If the description required by Indiana Code 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (f) The approximate starting and completion date of the home improvements;
- (g) A statement of any contingencies that would materially change the approximate completion date;
- (h) The home improvement contract price; and
- (i) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

5. Respondent agrees, pursuant to Ind. Code § 24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down

payment, the Respondent must have agreed unequivocally by written signature to all of the terms of the home improvement contract.

6. Respondent agrees, pursuant to Ind. Code § 24-5-11-12, that the Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the Respondent and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code § 24-5-11-1--14.

8. Respondent agrees to refrain from conducting any home improvements until he has first obtained all necessary licenses and building permits required by law.

9. Respondent, in soliciting and/or contracting with consumers, agrees to comply in all aspects with the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1--10.

10. Upon execution of this Assurance, Respondent shall pay consumer restitution in the amount of Three Hundred Ninety-three and 00/100 Dollars (\$393.95) to the Office of the Attorney General on behalf of Ms. Susan Snowden, 209 Indiana Avenue, Mishawaka, IN 46544.

11. Upon execution of this Assurance, Respondent shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General.

12. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

13. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

14. The Office of the Attorney General shall file this Assurance with the Circuit Court of St. Joseph County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 16th day of February, 2001.

STATE OF INDIANA

RESPONDENT

STEVE CARTER
Attorney General of Indiana

KENNY DAILY
individually and doing business as
UPRIGHT CONSTRUCTION

By:

Eric Jackson
Eric Jackson
Deputy Attorney General
Atty. No. 19415-49

Kenny Daily
Kenny Daily

393.95

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402 W. Washington, 5th Floor
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Telephone: (317) 233-3987

30 days \$500.00

TOTAL 893.95

APPROVED this 5 day of March, 2001.

Terry A. Lina

Judge, St. Joseph Circuit Court